

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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HENRY BOYD,

Plaintiff,

v.

**Hon. Hugh B. Scott**

06CV520A

**Order**

WYOMING COUNTY, et al.,

Defendants.

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Before the Court is plaintiff's motion (letter to Chambers, Sept. 24, 2008; see Docket No.38, minutes) seeking entry of default judgment entered against defendants (apparently against new defendants Sawyer, Zarbo, and Considine), based upon an earlier Amended Complaint, filed on February 11, 2007 (Docket No. 4) and their failure to timely answer that pleading.

That first Amended Complaint only named defendant James Conway, the State of New York, and three John Doe defendants (Docket No. 4). Plaintiff, however, filed two subsequent Amended Complaints (Docket No. 15 (which dropped New York State as a party), 21 (which named the former John Doe defendants)), with each amendment superceding the earlier pleading, see Levitch v. Columbia Broadcasting Sys., Inc., 94 F.R.D. 292, 294 (S.D.N.Y. 1982). The last Amended Complaint was filed on January 22, 2008 (Docket No. 21), and this Court ordered that this amended pleading be served by the United States Marshal (Docket No. 22). The summonses were returned by these new defendants around April 21, 2008 (Docket Nos. 23-25), with their Answers due on or before May 12, 2008 (id.). These defendants filed a timely Answer on May 12, 2008 (Docket No. 27).

As plaintiff notes, a defendant's time to answer a Complaint is "within 20 days after being served with the summons and complaint," Fed. R. Civ. P. 12(a)(1)(A)(i) (emphasis added). Plaintiff here incorrectly points to the wrong pleading (his first Amended Complaint rather than his third Amended Complaint) as the starting point for a potential default and to the date of its filing and not when it was served upon these defendants. Therefore, plaintiff's request for default judgment against defendants (plaintiff's letter) is **denied**.

So Ordered.

/s/ Hugh B. Scott  
Honorable Hugh B. Scott  
United States Magistrate Judge

Dated: Buffalo, New York  
December 4, 2008